

# EXHIBIT 1

CAUSE NO. \_\_\_\_\_

JOSHUA GRAY	§	IN THE DISTRICT COURT
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
KBR, INC.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Joshua Gray ("Plaintiff"), complaining of Defendant KBR, Inc. ("KBR" or "Defendant"), and, for cause of action, would respectfully show this Honorable Court as follows:

**I. DISCOVERY CONTROL PLAN**

1.1 Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

1.2 This suit does not fall under the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks damages in excess of \$250,000.

**II. CLAIM FOR RELIEF**

2.1 While Plaintiff leaves the determination of the amount to the jury for the unspeakable pain and suffering he has endured, Plaintiff must also comply with Texas Rule of Civil Procedure 47. In fulfilling this duty, and under Rule 47, Plaintiff pleads that the damages sustained exceed \$10,000,000.00.

**III. PARTIES**

3.1 Plaintiff, Joshua Gray, is a citizen of California.

3.2 Defendant KBR, Inc. is a Delaware corporation with its principal place of business in Houston, Texas, doing business in the State of Texas for the purpose of accumulating monetary profit. KBR failed to properly supervise and evacuate the contractors though it had the power and duty to do so. It has become necessary to bring this suit, because KBR's acts and omissions resulted in Plaintiff being left in a dangerous, hostile land where ultimately he sustained life altering injuries during a missile attack. KBR may be served with process through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, as such it is a citizen of Texas.

3.3 Plaintiff specifically invokes the right to institute this suit against whatever entities were conducting business using an assumed or common name, if any, with regard to the events described in this Petition. Plaintiff specifically invokes the right under Rule 28, Texas Rules of Civil Procedure, to have the true name of such parties substituted at a later time, if necessary.

#### **IV. JURISDICTION & VENUE**

4.1 This Court has jurisdiction over this case because Defendant is a citizen of and maintains its principle place of business in Texas. The damages sought herein are in excess of the minimal jurisdictional limits of this Court.

4.2 This case is not removable as there is no diversity of citizenship as the Defendant has its principal place of business and home office in Texas and is therefore a citizen of the State of Texas, precluding removal.

4.3 Furthermore, Defendant KBR has judicially admitted that it was not a party to any contract with the government of the United States, and therefore, there is no federal question jurisdiction presented in this matter pursuant to the terms of that contract.<sup>1</sup>

4.4 Plaintiff does not bring any cause of action under the Defense Base Act (“DBA”), nor are his claims governed by this Act, because the sole Defendant in this lawsuit was neither his legal or fictional employer nor was it in contract with the government of the United States. The DBA’s plain text provides that “[t]he liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this chapter shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees . . . .”. Any removal of this lawsuit by KBR to federal court on the basis that Plaintiff’s claims are governed by the DBA would be fraudulent on its face, done solely in an attempt to improperly forum shop.

4.5 Any allegations that Plaintiff’s claims are barred by the Federal Tort Claims Act are similarly false because KBR has judicially admitted that it did not contract with the federal government to perform the work that was done by the Plaintiff. Because it did not contract with the government, KBR is not considered a government contractor for purposes of this suit.

4.6 This case is brought for negligence under the laws of the State of Texas, and does not invoke any federal law.

4.7 Venue is proper in Harris County, Texas under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3), as Defendant’s principal office in this state is located in Harris County, Texas.

---

<sup>1</sup> See KBR Motion to Dismiss in Case No. 4:20-cv-00985: *Kevin Cloyd, et al. v. KBR, Inc.*, in the United States District Court for the Southern District of Texas (Doc. 3): “ **KBR, Inc....was not party to the government contract at issue here.**” (emphasis added)

## **V. FACTUAL BACKGROUND**

5.1 It has become necessary to bring this lawsuit as a result of the failure of KBR to evacuate workers from Iraq prior to the Iranian missile attack on an Iraqi base on January 8, 2020.

5.2 On the date of the attack, Plaintiff was employed by Service Employees International, Inc. working at the military base as an assistant fire chief. KBR had the authority to supervise and evacuate the Service Employees International, Inc. employees present at the base. Unfortunately, KBR decided to ignore the unambiguous threats of retaliation levied by Iran following the death of General Qassem Soleimani. Placing profits over the safety of the individuals and contractors, KBR failed to evacuate them. At the same time KBR was focusing on profits, numerous other companies heeded the warnings issued by the United States Government and evacuated workers prior to their sustaining harm.

### **Tineline of Events**

#### ***June 20, 2019:***

5.3 Iran's Islamic Revolutionary Guard Corps shot down a United States RQ-4A Global Hawk BAMS-D surveillance drone with a surface-to-air missile over the Strait of Hormuz.

#### ***June 22, 2019:***

5.4 Amid escalating confrontation between Iran and the United States, Iran's armed forces general staff spokesman Brigadier General Abolfazl Shekarchi warned the United States: "Firing one bullet towards Iran will set fire to the interests of America and its allies."

5.5 U.S. Department of Homeland Security issues a warning to U.S. industries that Iran was stepping up cyber attacks of critical industries — particularly oil, gas and other energy sectors — and government agencies, and have the potential to disrupt or destroy systems

#### ***July 19, 2019:***

5.6 In retaliation for Britain's seizure of an Iranian tanker at the request of the United States, Iran seized a British Oil Tanker in the Strait of Hormuz.

***December 27, 2019:***

5.7 A rocket attack believed to be linked to a Shiite militia group, backed by Iran's Islamic Revolutionary Guard Corps, killed a US civilian contractor and wounded several US and Iraq military personnel on a base near Kirkuk, Iraq.

***December 29, 2019:***

5.8 According to the Pentagon, US forces conducted airstrikes at five facilities in Iraq and Syria controlled by a Shiite military group known as Kataib Hezbollah -- the group that American officials blamed for the attack on the base near Kirkuk.

***January 3, 2020:***

5.9 On January 3, 2020, a drone strike by the U.S. Government killed Iranian General Qassem Soleimani near the Baghdad Airport. Following the attack, Iran vowed retaliation against the United States.

5.10 Iran's Foreign Minister Javad Zarif immediately condemned the attack on Twitter saying that the US "bears responsibility for all consequences of its rogue adventurism."

5.11 Iranian Supreme Leader Ayatollah Ali Khamenei threatened "severe retaliation." Khamenei said the U.S. action will "double the motivation" of the Iranian people's resistance against the United States.

5.12 Iran's President, Hassan Rouhani, issued a statement: "Suleimani's martyrdom will make Iran more decisive to resist America's expansionism and to defend our Islamic values. With no doubt, Iran and other freedom-seeking countries in the region will take his revenge."

5.13 Iranian news agency IRNA quoted Iran's Defense Minister Amir Hatami as saying Tehran would extract "crushing revenge" for Soleimani's killing.

5.14 Pro-Iranian protesters, demonstrating against the American airstrikes, attacked the US Embassy in Baghdad, scaling walls and forcing the gates open.

5.15 The U.S. State Department issued a travel warning for Americans, urging them to leave Iraq immediately. The United States announced that it would send 3,000 additional troops to the Middle East amid rising tensions in the region.

5.16 American workers from a number of foreign companies that were in Iraq began to leave the country.

5.17 ExxonMobil begins to evacuate employees located at its West Qurna field in Iraq.

5.18 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

***January 4, 2020:***

5.19 Thousands gather for the funeral procession of Soleimani in Baghdad, Iraq.

5.20 Revolutionary Guards General Gholamali Abuhmzeh said Iran will punish Americans wherever they are within reach of the Islamic Republic. "Vital American targets in the region have been identified by Iran since long time ago ... some 35 US targets in the region as well as Tel Aviv are within our reach."

5.21 NATO suspended training missions in Iraq, citing security concerns. The NATO Secretary General noted: "In everything that we do, the safety of our personnel is paramount. As such, we have temporarily suspended our training on the ground."

5.22 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

***January 5, 2020:***

5.23 Soleimani's body is returned to Iran and sent to the city of Ahvaz, according to the state-run IRIB news agency. Thousands began gathering in the city to mourn the general.

5.24 The military advisor to Iran's Supreme Leader states: "*The response for sure will be military and against military sites.*" (Emphasis added).

5.25 Hezbollah chief Hassan Nasrallah vowed to mete out "just retribution" for the killing of Soleimani.

5.26 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

***January 6, 2020:***

5.27 UN Secretary-General Antonio Guterres warns that tensions are at their "highest level this century," in an address. "The New Year has begun with our world in turmoil," he wrote on Twitter.

5.28 Hundreds of thousands flood Tehran's streets to mourn Soleimani while Khamenei led prayers at the funeral. Many of those on the streets of the Iranian capital were visibly upset and angry; others shouted "down with the USA" and "death to the USA."

5.29 Abu Ali al-Askari, the security leader of Iranian-backed Iraqi Shiite militia Kataib Hezbollah stated on Twitter: "Regarding the air base it will be brought to the ground if they (US troops) insist to stay in Iraq."

5.30 Chevron evacuated all American oil workers from the northern part of Iraq. "The safety of our people and facilities is Chevron's top priority globally," a Chevron spokesperson told CNN.



5.31 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

***January 7, 2020:***

5.32 More than 50 people are reported dead, and over 200 injured after a stampede at Soleimani's funeral in his home city of Kerman. Over a million people were estimated to be in attendance, in what would be Iran's largest funeral procession since the 1989 funeral of Ayatollah Ruhollah Khomeini, the leader of the 1979 Islamic Revolution.

5.33 Iranian lawmakers unanimously voted for a motion declaring all US forces as “terrorists” in response to the killing of Iranian General Qassem Soleimani. After the plan was approved, delegates chanted, “Death to America.”

5.34 In an interview with CNN, Iranian Foreign Minister Javad Zarif stated: “We will defend our own territory, we will defend our people.” He continued and noted that the killing “has enraged the people of our region,” and that “this is an act of aggression against Iran, and amounts to an armed attack against Iran and we will respond.”

5.35 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

***January 8, 2020:***

5.36 Iran launches 22 ballistic missiles at two military bases hosting US and allied troops in Iraq, in what Ayatollah Ali Khamenei described as a “slap in the face” for the killing of Soleimani.

5.37 The explosions, and resultant impacts, caused substantial physical and mental injuries to Gray. His medical treatment is only just beginning, and will likely require treatment for the remainder of his life, due to the significant injuries he has sustained.

5.38 KBR supervised Service Employees International, Inc. who sent Plaintiff to work on the military base with representations about its security and commitment to safety. However, even after KBR had been made aware of the heightened risk of a strike in the face of evidence of the escalating regional violence, it left Plaintiff and the other employees of Service Employees International and Overseas Administrative Service at the base, in direct risk of substantial harm.

5.39 Plaintiff files this lawsuit to recover for the injuries and damages sustained, and to prevent similar tragedies from being visited upon other families.

## **VI. NEGLIGENCE**

6.1 Defendant owed Plaintiff a duty to exercise ordinary care to ensure that Plaintiff was not injured by its acts and/or omissions and was well aware of the foregoing facts in paragraphs 5.3 through 5.39, incorporated herein, but failed to act when it had the power to do so.

6.2 Defendant engaged in negligent acts and/or omissions resulting in the injuries and resultant damages to Plaintiff. Defendant failed to protect contractors, including Plaintiff, from the conditions it knew, or should have known, about and failed to evacuate contractors when a reasonably prudent person and company would have done so when it had the power to.

6.3 The damages sustained by Plaintiff was proximately caused by the negligence of Defendant, its officers, agents, or employees, in one or more of the following ways:

- (a) failing to properly select, hire, train and manage Defendant's employees, who had supervisory authority over the facility where Plaintiff was deployed;
- (b) failing to properly select, hire, train and manage independent contractors who it supervised;
- (c) failing to implement proper and adequate safety methods and/or procedures which it supervised;
- (d) failing to take reasonable precautions for Plaintiff's safety;

- (e) failing to provide Plaintiff with a reasonably safe place to work including failing to evacuate and/or supervise Plaintiff;
- (f) failing to provide security measures, including, but not limited to, adequate and sufficient communication of safety information and status updates, a means of evacuating Iraq when conditions became unreasonably dangerous, and protection from violent attacks;
- (g) failing to properly and adequately provide safety training, planning, and information to Plaintiff in the event the base came under violent attack; and
- (h) other acts of negligence and/or omissions to be shown at trial herein.

## **VII. GROSS NEGLIGENCE**

7.1 The Defendant's acts and/or omissions rose to the level of gross negligence and warrant the imposition of exemplary damages.

7.2 The acts and omissions of Defendant involved an extreme degree of risk, considering the probability and magnitude of harm to others, and Defendant had actual, subjective awareness of the risks but proceeded with conscious indifference to the rights, safety, and welfare of others.

## **VIII. DAMAGES**

8.1 As a direct and proximate result of all Defendant's negligence and/or gross negligence, Plaintiff suffered the following injuries and resultant damages, including, but not limited to: (a) mental anguish in the past and future; (b) lost earnings; (c) loss of earning capacity; (d) disfigurement in the past and future; (e) physical impairment in the past and future; (f) medical expenses in the past and future; (g) physical pain and suffering in the past and future; (h) punitive damages.

8.2 Plaintiff is seeking monetary relief over \$10,000,000.

WHEREFORE, Plaintiff prays the Court issue citation for Defendant to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:

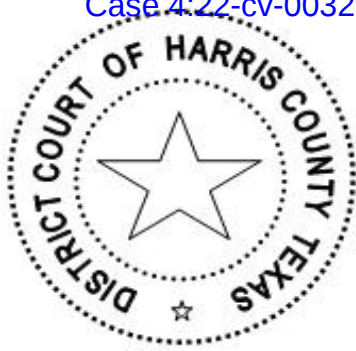
- a. Actual damages;
- b. Exemplary damages;
- c. Prejudgment and post-judgment interest;
- d. Court costs;
- e. Punitive damages and attorney's fees; and
- f. All other relief to which Plaintiff is entitled.

Respectfully submitted,

By: /s/ Marcus R. Spagnoletti

Marcus R. Spagnoletti  
State Bar No. 24076708  
mspagnoletti@spaglaw.com  
Eric J. Rhine  
State Bar No. 24060485  
erhine@spaglaw.com  
SPAGNOLETTI LAW FIRM  
401 Louisiana Street, 8th Floor  
Houston, Texas 77002  
713.653.5600 (T)  
713.653.5656 (F)

ATTORNEYS FOR PLAINTIFF



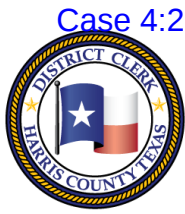
I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 28, 2022

Certified Document Number: 99659280 Total Pages: 11

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

**Marilyn Burgess**

HARRIS COUNTY DISTRICT CLERK

Marilyn Burgess - District Clerk Harris County

Envelope No. 60449127

By: Lisa Thomas

Filed: 1/3/2022 4:16 PM

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-927-5800 | www.hcdistrictclerk.com

**Request for Issuance of Service**

CASE NUMBER: 2022-00168

CURRENT COURT: 165th

Name(s) of Documents to be served: Plaintiff's Original Petition

FILE DATE: 01/03/2022 Month/Day/Year

**SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):**

Issue Service to: KBR, Inc.

Address of Service:

City, State &amp; Zip:

Agent (if applicable) C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201

**TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)**

- ☒ Citation
 ☐ Citation by Posting
 ☐ Citation by Publication
 ☐ Citations Rule 106 Service
- ☐ Citation Scire Facias Newspaper
- ☐ Temporary Restraining Order
 ☐ Precept
 ☐ Notice
- ☐ Protective Order
- ☐ Secretary of State Citation (\$12.00)
 ☐ Capias (not by E-Issuance)
 ☐ Attachment (not by E-Issuance)
- ☐ Certiorari
 ☐ Highway Commission (\$12.00)
- ☐ Commissioner of Insurance (\$12.00)
 ☐ Hague Convention (\$16.00)
 ☐ Garnishment
- ☐ Habeas Corpus (not by E-Issuance)
 ☐ Injunction
 ☐ Sequestration
- ☐ Subpoena
- ☐ Other (Please Describe)

(See additional Forms for Post Judgment Service)

**SERVICE BY (check one):**

- ☐ ATTORNEY PICK-UP (phone)
 ☒ E-Issuance by District Clerk  
(No Service Copy Fees Charged)
- ☐ MAIL to attorney at:
- ☐ CONSTABLE
- ☐ CERTIFIED MAIL by District Clerk
- ☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: Phone:
- ☐ OTHER, explain

**Note:** The email registered with EfileTexas.gov must be used to retrieve the E-Issuance Service Documents. Visit [www.hcdistrictclerk.com](http://www.hcdistrictclerk.com) for more instructions.

Issuance of Service Requested By: Attorney/Party Name: Eric J. Rhine

Bar # or ID 24060485

Mailing Address: 401 Louisiana Street, 8th Floor, Houston, Texas 77002

Phone Number: (713) 653-5600



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 28, 2022

Certified Document Number: 99664489 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

CAUSE NO. 202200168

COPY OF PLEADING PROVIDED BY PLT

RECEIPT NO: 956258 TRACKING NO: 73957299  
EML

Plaintiff:  
GRAY, JOSHUA  
vs.  
Defendant:  
KBR INC

In The 165th  
Judicial District Court of  
Harris County, Texas  
201 CAROLINE  
Houston, Texas

**CITATION CORPORATE**

**THE STATE OF TEXAS**  
**County of Harris**

**To: KBR INC (A DELAWARE CORPORATION) MAY BE SERVED THROUGH ITS REGISTERED AGENT  
C T CORPORATION SYSTEM  
1999 BRYAN STREET SUITE 900, DALLAS TX 75201**

Attached is a copy of: PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on January 3, 2022 in the above cited cause number and court. The instrument attached describes the claim against you.

**YOU HAVE BEEN SUED.** You may employ an attorney. If you or your Attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration date of 20 days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

This citation was issued on January 4, 2022, under my hand and seal of said court.

Issued at the request of:

RHINE, ERIC JONATHAN  
401 LOUISIANA, 8TH FLOOR  
HOUSTON, TX 77002  
713-653-5600  
Bar Number: 24060485



*Marilyn Burgess*

Marilyn Burgess, District Clerk

Harris County, Texas  
201 CAROLINE Houston Texas 77002  
(PO Box 4651, Houston, Texas 77210)

Generated By:LISA THOMAS



EML

Tracking Number: 73957299

CAUSE NUMBER: 202200168

PLAINTIFF: GRAY, JOSHUA

vs.

DEFENDANT: KBR INC

In the 165th

Judicial District Court of

Harris County, Texas

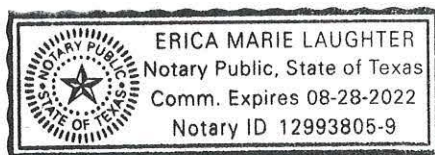
## OFFICER - AUTHORIZED PERSON RETURN

Came to hand at 2:02 o'clock P. M. on the 4th day of January, 2022. Executed at(Address) 401 Louisiana Street, 8th Floor, Houston, Texas 77002  
inHarris County at o'clock 11:52 A. M. On the 7th day of January, 2022, byDelivering to C T Corporation System, registered agent for defendant, ~~XXXXXX~~, a true copy of this Citation together with the accompanying 1 copy (ies) of the ~~XXXXXX~~ Petition attached thereto and I endorsed on said copy of the Citation the date of delivery. Plaintiff's OriginalTo certify which I affix my hand officially this 17TH day of January, 2022

Fees \$ \_\_\_\_\_

Meghan C. Martine

Affiant

By \_\_\_\_\_  
DeputyOn this day, Meghan C. Martine, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.SWORN TO AND SUBSCRIBED BEFORE ME, On this 17th day of January, 2022

A handwritten signature in blue ink that reads "Erica Laughter".

Notary Public

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Meghan Martine on behalf of Eric Rhine  
 Bar No. 24060485  
 meghan@spaglaw.com  
 Envelope ID: 60873029  
 Status as of 1/18/2022 8:11 AM CST

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Marcus RSpagnoletti		marcus@spaglaw.com	1/17/2022 2:02:11 PM	SENT
Eric JRhine		erhine@spaglaw.com	1/17/2022 2:02:11 PM	SENT
Meghan Martine		meghan@spaglaw.com	1/17/2022 2:02:11 PM	SENT



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 28, 2022

Certified Document Number: 99886579 Total Pages: 3

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**